

LABOUR DEPARTMENT

The 23rd November, 1987

No. 9/1/87-6Lab./9102.--In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s Super Rubber Enterprises, 17/3 Milestone, G.T. Road, Karnal.

BEFORE SHRI K. K. DODA, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 38 of 1984

between

SHRI BAIJ NATH THAKUR, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S SUPER RUBBER ENTERPRISES, 17/3 MILE STONE, G.T. ROAD, KARNAL.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Hon'ble Governor of Haryana referred the following dispute between Shri Baij Nath Thakur, workman and the respondent management of M/s. Super Rubber Enterprises, 17/3 Mile stone, G. T. Road, Karnal, to this Court, for adjudication :-

Whether the termination of services of Shri Baij Nath Thakur is justified and in order ? If not, to what relief is he entitled ?

2. Workman Baij Nath Thakur's case, in brief, is that he had been working in the respondent's factory since 27th August, 1981 (typed as 23rd August, 1984 in the Claim statement which is apparently due to bona fide mistake). He worked for more than 240 days. On 18th July, 1983 his services were terminated without any reason. He was not served with any notice nor any enquiry was held. On 21st July, 1983 he had received an anti-dated letter dated 16th July, 1983 containing allegations regarding his absence from duty without leave. Prior to this letter he was never chargesheeted for having remained absent from duty nor any kind of warning in this behalf was ever given to him by the management. Management had become allergic to the formation of a registered trade union. He contended that his termination is against the provisions of Industrial Law. He has been victimised and has been shunted out by un fair labour practise.

3. Management has contested in terms of written statement filed on 12th October, 1984. Assertively denied all the allegations made by the workman. Reiterated that services of workman were dispensed without 8th July, 1987 for the reason that his work and conduct was neither satisfactory nor conducive to the interest of M/s. Super Rubber Enterprises. Pointed out that the workman had not completed 240 working days. Made clear that the management had high regards for the spirit of trade union. Pleaded that the workman had not *locus standi*; claim was not maintainable; this court has no jurisdiction and that the complaint lodged by the workman with the Labour Inspector, as stated in Para No. 6 of the claim statement, was false and was replied suitably.

4. The workman filed replication contraverting the pleas taken up by the management and reiterated his contentions. He stated that he had been working since 27th August, 1979 and worked upto 18th July, 1983. Following issues were laid down on 20th November, 1984 by the then Presiding Officer, Labour Court for decision:-

- (i) Whether the termination order of the services of applicant dated 18th July, 1983 is legal ? (OPR)
- (ii) Whether the applicant has got no *locus standi* ? (OPR)
- (iii) Whether the application is not maintainable in the present form ?
- (iv) Whether this Court has no jurisdiction to try the dispute in question ? (OPR)
- (v) Relief.

5. As per record, management examined Shri Ramji Lal, General Supervisor and Suresh Kumar, Accountant. Reliance has been placed upon photo-stat copy Ex.M-1 of the declaration form of ESI furnished by the workman on 1st August, 1982. Photo stat copy Ex. M-2 of the order, --vide which services of the workman were terminated, photo stat copy Ex. M-2/A (M-3) of the letter, containing allegations of absence from duty of the workman, sent by the management to the workman, photo-stat copy Ex. M-2/B of postal receipt and Ex. M-3/A photo-stat copies of postal receipts. Workman appeared in the witness box on 25th April, 1986 in his own evidence and examined Shri Suresh Kumar, Accountant of the respondent-management. Workman has relied upon photo-stat copy

Ex. A/1 of ESI identity Card, photo-stat copy Ex. A/2 of the complaint sent by him (workman) to the Labour Inspector, photo-stat copy Ex. A/3/I of the letter dated 16th July, 1983 sent to him by the management by registered post ; photo-stat copy A/3-A of the outer cover of the envelope ; photo-stat copy Ex. A/4 of the reply sent by him (workman) to the management regarding allegations made against him. Photo-stat copy Ex. A/4/I of the envelope (UPC) in which he had sent the reply and photo-stat copy of the order *vide* which his services were terminated and photo-stat copy Ex. A-6 of the outer cover of the envelope in which the termination order was sent. He has also relied upon photo-stat copy A/7 of the order passed by the Conciliation Officer, Panipat on the demand notice dated 3rd August, 1983 of the workman.

6. S/Shri N.R. Munjal and J.B. Yadav represented the workman. Shri Vijay Kumar represented the respondent-management.

7. I have gone through the entire material on record with requisite anxiety. The learned representatives of the parties were also heard to their satisfaction. My findings on the issues with the reasons are as under :—

8. *Issue No. 1.*—The learned representative of the workman submitted that the workman had completed 240 days of service before he was terminated illegally. Management representative gave to understand that the workman had never worked continuously for more than 60 days and had not at all completed 240 days of service. On close perusal of the statement of MW-2/AW-2 Suresh Kumar and that of the workman, it becomes clear that the workman was initially appointed on 27th August, 1981 for three months only. Workman has admitted this fact in his cross-examination. Further he has admitted that thereafter he was taken on a job in 1982. Suresh Kumar AW/2 made clear that the workman was taken on job in the year 1982 on 1st August, 1982 as Miner man. This fact is corroborated by the ESI declaration form which the workman had furnished and the carbon copy of which on record is Ex. M-1. It means that the workman was appointed on regular basis on 1st August, 1982. His three months service done by him in the year 1982 cannot be counted for the simple reason that it has now become clear that he was appointed in the year 1981 for a specified period of 3 months. Then it is not disputed that services of the workman were terminated on 18th July, 1983. It is the workman who has examined the Accountant Suresh Kumar of the respondent-management and he had brought attendance record with him on the day of his evidence. From the evidence of Shri Suresh Kumar it has becomes clear that from 1st August, 1982 to June, 1983 workman had actually worked for 222½ days, including Sundays and leave enjoyed by the workman during this period. Factory remained closed for 60 days. This period of 60 days has also to be included as required by section 25-B of Industrial Disputes Act, 1947, for the purposes of determination of continuous service of the workman, Baij Nath. In this context it is necessary to mention here that the workman has categorically stated in his evidence that he was being paid his wages for the days for which he had done work during the said period. It is not at all the case of the workman that he was paid less wages by the management. It is further necessary to mention here that it was never put to AW-2 Suresh Kumar on behalf of the workman that the workman had worked in the month of July, 1983 and June, 1983 and from 6th June, 1983 onwards. It is thus manifestly clear from the evidence on record that the workman had not completed 240 days of service in the year preceding the date of his termination. Under these circumstances, I am afraid that the workman can take advantage of section 25-F of the Industrial Disputes Act, 1947.

9. Next question which has to be determined is whether the termination of services was justified and in order. It is not disputed that the management had sent registered letter to the workman containing allegations that he was in the habit of remaining absent from duty and was absent from 6th June, 1983 onwards. This letter also contained the details of the day on which he (workman) remained absent. By this letter workman was asked to submit his explanation within 3 days. It is also not disputed that the workman had submitted his explanation which the management did not find satisfactory. It is an admitted case of the parties that no enquiry regarding absence from duty was conducted by the management against the workman.

10. Learned representative of the workman laid stress on the point that holding of enquiry regarding absence from duty was mandatory. Management ought to have held the enquiry against the workman in order to find out whether or not allegations made against the workman were true. Because no enquiry was held therefore termination of services of the workman is illegal and bad. Learned representative of the management, while referring to the evidence on record, submitted that enquiry was not necessary for the reason that the workman was admittedly absent from 6th June, 1983 and he had remained absent on the days mentioned in the letter containing allegation .

11. The contentions of learned representative of the management are not devoid of force. Suresh Kumar AN-2 has given details of days on which the workman remained absent from duty from the period January, 1983 to June, 1983. The contents of copy of letter sent to the workman containing allegations regarding his absence from duty during the said period reveals that the workman remained absent for 5 days in January, 1983, two days in February, 1983, for 11 days in March, 1983, 6 days in April, 1983 and 7 days in May, 1983 for significantly, the workman in his evidence admitted that his wages for the days he remained absent used to be deducted. He stated that he did not remember as to for how many days he remained absent. In his next breath he stated that he used to receive his monthly wages under his signatures and after counting the days he had worked in that month. Nowhere in his evidence he has alleged that he was ever paid less wages or that he was not paid wages for the days

in which he had worked. Significantly, no suggestion was put to AW2 Suresh Kumar to the effect that the workman continuing absenting his duty from 6th June, 1983 onwards. The attendance record summoned by the workman brought by AW-2 Shri Suresh Kumar at his instance does not support the plea of the workman that he had worked in June, 1983 from 6th June, 1983 onwards upto 18th July, 1983. Evidence of Suresh Kumar is in conformity with the details of absence period given in the letter sent by the management to the workman regarding allegations of absence from duty. It is manifestly clear from the record that the workman had become habitual absentee and had never bothered to report on duty regularly. Management certainly has right to shunt out irregular, insincere and inefficient worker. It is the right of the management which has legal as well as moral recognition. A worker in a factory is a limb of the industry. There would be interruption and disruption in the working and functioning of the factory if the worker did not report on duty regularly. Because main allegations against the workman were that he was habitual absentee and had been absent from 6th June, 1983 onwards and these allegations are supported by the attendance record of the workman, therefore, it was not at all necessary for the management to hold any enquiry against the workman regarding these allegations. Before this Court also, workman has not been able to repel or rebut the allegations on the basis of which he was terminated from service. He has not at all explained the reasons for which he remained absent from duty during the aforesaid period. Assuming that the workman had completed 240 days of service before his termination, there are no good ground to hold that the impugned order of termination of the services of workman was in any way illegal or unjustified. A worker in a factory is expected to be regular, sincere to his job, punctual, obedient and efficient. A worker who absents without intimation and does not report on his job regularly is not only disliked but hated. An employer cannot be compelled to retain a worker who is a habitual absentee, insincere, irregular and inefficient. For the above reasons, it is held that termination of services of the workman Shri Baij Nath was justified and in order. Issue No. 1 is decided in favour of the respondent management and against the workman.

12. *Issue Nos. 2 to 4.*—Learned representative of the management did not argue on any of these issues. I do not find any defect in maintainability of this reference. Workman did have *locus standi* and this Court certainly has got jurisdiction to adjudicate upon the reference in question. All these issues are decided against the management.

13. *Relief.*—As a consequence of observations and findings on Issue No. 1 it is held that termination of services of workman, Baij Nath was legal, justified and in order.

14. Reference is answered accordingly.

K. K. DODA,

Presiding Officer,
Labour Court, Ambala.

Endstt. No. 2444, dated 28th October, 1987

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

K. K. DODA,

Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6Lab./9104.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of The Ambala Central Co-operative Bank Ltd., Ambala City.

BEFORE SHRI K. K. DODA, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 27 of 1985
between

SHRI RAM KUMAR, WORKMAN AND THE RESPONDENT MANAGEMENT OF THE
AMBALA CENTRAL CO-OPERATIVE BANK, LTD., AMBALA CITY
AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Hon'ble Governor of Haryana referred the following dispute between Shri Ram Kumar, workman and respondent-management of The Ambala Central Co-operative Bank Ltd., Ambala City, to this Court for adjudication :—

Whether the termination of services of Shri Ram Kumar is justified and in order ? If not, to what relief is he entitled ?

2. Ram Kumar's case, in brief, is that he was appointed as a Mini Bank Manager under the respondent management in October, 1979 and was posted at Morni. He had deposited Rs. 2,000 as surety and the same is still lying deposited with the Bank. P.F. had also been deducted from his wages. He had become a permanent employee under the management, by serving more than 4 years. He was made a Mini Bank Manager, but his designation was changed as Secretary without any rhyme and reason and without affording any reasonable opportunity to him. He was then terminated on 13th April, 1983 illegally and without any justification. He had already completed 240 days of service. Provisions of Section 25-F of the Industrial Disputes Act were not followed by the management before his termination. He prayed for reinstatement, continuity of service and full back wages.

3. Management contested in terms of written statement, dated 5th June, 1985. Pleaded that the claimant was initially appointed on *ad-hoc* basis for 89 days and was then re-appointed on his own request. Surety was got deposited from the claimant, in compliance of the bank's rules P.F. was also deducted, but in accordance with the rules. Designation was changed by the competent authority. Section 25-F of the Industrial Disputes Act, 1947 did not apply on the facts of this case. Raised objection that this court has no jurisdiction, in view of the provisions of Haryana Co-operative Societies Act, 1947.

4. Workman filed replication contraverting the pleas taken by the management and reiterated his claim.

5. Following issues were laid down on 14th June, 1985 by my learned predecessor for decision :—

- (i) Whether the termination order, dated 13th April, 1983 is justified ? If not, its effect ?
- (ii) Whether the Labour Court has no jurisdiction to try the case ? OPM
- (iii) Relief ?

6. Because the matter regarding jurisdiction was pending before the Hon'ble High Court, therefore, this case was adjourned sine die,—*vide* order, dated 10th December, 1985 passed by my learned predecessor. It was restored,—*vide* order, dated 29th October, 1986.

7. This case came up before me for the first time on 14th July, 1987 and issue No. 1 framed on 14th June, 1985 was substituted as under :—

Whether termination of services of the workman is illegal and liable to be set aside ?

8. Workman appeared in the witness box on 9th September, 1983 and examined Shri Ranbir Singh Secretary, Morni Hills.

9. At last there was compromise between the parties and they settled their dispute amicably.

10. Shri J.R. Sharma represented the workman and Gian Grewal represented the management.

11. M.R. Shri Gian Grewal referred to management letter Ex.M-1 and made a statement on 20th October, 1987 that the management was ready to take the workman back in service on the conditions stated in Ex. M-1. Workman Ram Kumar made statement agreeing to the same. To-day, Shri Darb Singh, Estt. Officer produced letter Ex. M-2 according to which the management undertook to take the workman in service on 2nd November, 1987 or from the date of his joining, whichever is later. Statement of the workman Shri Ram Kumar was also recorded and he agreed to the terms and conditions mentioned in Exhibits M-1 and M-2.

12. The learned representatives of both the parties stated at the Bar in view of law laid in 1986; Lab. I.C. Sonepat Sugar Mills *versus* Presiding Officer, Labour Court, Rohtak, page 1916 Labour Court has jurisdiction to adjudicate upon this reference under the Industrial Disputes Act.

13. I am satisfied that the parties have entered into an amicable settlement which shall bring an end to the long standing litigation. In view of compromise entered into between the parties, it is held that the order, dated 13th April, 1983 passed by the management terminating the services of the workman Ram Kumar was illegal and un-justified. The workman accordingly deserved reinstatement with continuity in service and full back wages. But the parties have compromised and have settled the dispute amicably. The management has undertaken to take the workman Shri Ram Kumar back in service without back wages but with all service benefits and continuity in service on the same terms and conditions of which he was in service prior to his termination. The workman Shri Ram Kumar has agreed not to claim back wages.

The management has further undertaken to take the workman back into service with effect from ^{2nd} November, 1987 or from the date when the workman joins, which ever is later. Both the parties have undertaken to abide by the above terms and conditions.

14. Reference is answered accordingly.

K. K. DODA.

Dated the 28th October, 1987,

Presiding Officer,
Labour Court Ambala.